

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL
DISTRICT, DRY CREEK SCHOOL
DISTRICT AND CENTER UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2010110357

ORDER GRANTING SAN JUAN
UNIFIED SCHOOL DISTRICT'S
MOTION TO DISMISS

On November 27, 2010, Student filed an amended Request for Due Process Hearing (amended complaint) against San Juan Unified School District (SJUSD), Dry Creek School District (DCSD) and Center Unified School District (CUSD). On December 1, 2010, SJUSD filed a Motion to Dismiss, alleging that it was not an appropriate party because Student does not reside within its geographical boundaries. The Office of Administrative Hearings (OAH) received no response to the Motion to Dismiss from Student.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child's parent or legal guardian resides. The determination of residency under the IDEA or the Education Code is no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.)

DISCUSSION

SJUSD contends that it should be dismissed as party because Student has never lived within its geographical boundaries, and Student's complaint does not allege that it denied her a free appropriate education (FAPE) as the dispute in the complaint concerns DCSD's and

CUSD's refusal to permit Student to attend her prior program at a SJUSD school. Student, who is deaf, formerly resided within CUSD, which does not operate a deaf/hard of hearing (HOH) program. Pursuant to an IEP dated May 13, 2010, CUSD offered Student placement at an infant/toddler deaf/HOH program in a neighboring district, SJUSD, with transportation. Student has attended that program.

On October 31, 2010, Student's family moved out of CUSD to a new residence located within DCSD. Parent applied to DCSD for an inter-district transfer back to CUSD, to maintain Student's placement and services. DCSD approved the inter-district transfer, but CUSD rejected it, apparently because the costs of the program and transportation were in dispute between DCSD and CUSD. Parent then filed for due process on November 5, 2010.¹

Student's new district, DCSD does operate a deaf/HOH program. Pending a new IEP, on November 9, 2010, DCSD offered Student an interim placement at DCSD's deaf/HOH program, which is 21 miles from Student's new home. The amended complaint seeks to maintain Student's placement within SJUSD, with transportation. The gravamen in Student's amended complaint is that DCSD and CUSD are denying Student a FAPE because the proposed interim placement requires excessive travel time. The amended complaint does not involve SJUSD because Student has never resided within its geographical boundaries. Additionally, Student does not allege that SJUSD was involved in the decision making process that prevented her from attending the SJUSD program after she moved into DCSD, or SJUSD denied her a FAPE in any other manner. Therefore, SJUSD's Motion to Dismiss itself as a party is granted.

ORDER

SJUSD's Motion to Dismiss itself as a party is granted. The matter will proceed as scheduled against the other remaining parties as presently scheduled.

Dated: December 8, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

¹ On November 15, 2010, OAH granted CUSD's NOI as to Student's original complaint and granting leave to amend. Student filed an amended complaint on November 27, 2010. This proceeding was mirrored in a virtually identical matter filed by Student's sibling, who concurrently filed an amended complaint put in OAH Case No. 2010110402, for which SJUSD filed a motion to dismiss. That motion is addressed by a separate Order in that matter.